

July 21, 2015

By e-mail: e-ORI@DOL.gov and e-OED@DOL.gov

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Definition of the Term “Fiduciary” (RIN 1210-AB32); Best Interest Contract Exemption (ZRIN 1210-ZA25), Amendment of PTE 84-24 (ZRIN 1210-ZA25), Amendment of PTE 77-4 (ZRIN 1210-ZA25)

Ladies and Gentlemen:

Founded in 1979, Makovsky is one of the world's leading independent communications consultancies, building businesses and reputations with ideas that cross the boundaries of traditional, digital, social and experiential media. The firm is headquartered in New York City with an office in Washington, D.C., and we have 52 employees, approximately 40% of whom are invested in the retirement market. In our 36-year existence, we have deep expertise in advising financial services firms, ranging from mutual fund companies, to private equity firms, to custodians and associations.

Makovsky appreciates the opportunity to comment on the U.S. Department of Labor’s (“DOL” or the “Department”) regulatory package published on April 20, 2015 expanding the definition of fiduciary investment advice and proposing new or amended prohibited transaction class exemptions. Specifically, we offer comments on the proposed regulation (the “Proposal”) redefining the term “fiduciary” with respect to the provision of investment advice under ERISA §3(21)(A)(ii),¹ the proposed prohibited transaction class exemption “Best Interest Contract Exemption” (“BICE”),² the proposed amendment to prohibited transaction class exemption 84-24 (“PTE 84-24”),³ and the proposed amendment to prohibited transaction class exemption 77-4 (“PTE 77-4”).⁴

¹ 80 Fed. Reg. 21,928 (Apr. 20, 2015)

² Id at 21,960.

³ Id at 22,010.

⁴ Id at 22,035.

Makovsky shares the Department's goal of ensuring ERISA plans, ERISA plan participants and beneficiaries, and Individual Retirement Account ("IRA") owners receive quality financial advice. Indeed, one of our firm's primary benefits is access to retirement plans, a responsibility we take very seriously. As the number of Americans reaching retirement age reaches an estimated 10,000 persons daily, it is vitally important that our private retirement system, from employer-provided plans to IRAs, protect the interests of employees and their families, and provide them the means to retire with the dignity that comes with financial security.

However, the Department has taken an approach that is so exceptionally complicated that we fear it will create disincentives to providing the very financial advice it seeks to protect. As a small business owner, I can tell you that I look at every dollar that gets spent to support this business that generates more \$11.5 million in revenue.

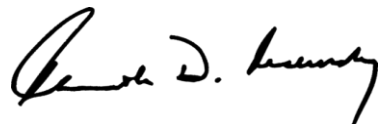
There are at least five primary reasons that we believe the proposed rule needs to be rethought and revised:

- **The Proposal Discriminates Against Small Businesses and Individuals**
 - Individual workers, sole proprietors and IRA owners would be subject to the full costs and restrictions of the rule. They would be denied the choice in what kind of financial advisors they work with, while giving large business retirement plans the choice to comply with the new rules or not. Small businesses, and low and middle income Americans, need the most help in saving for retirement, but this rule only allows big businesses to have a full range of choices and options.
- **The One-Size-Fits-All Rule Actually Prohibits Advisors from Acting in Your Best Interest in Some Cases; and Limits Access to Innovation.**
 - The Proposal makes it harder for participants and IRA owners to get investment education information, to get assistance in rolling over their previous employer plans into their new employer plans, and to get advice about investments not on the "approved" list of asset types and classes. The Proposal prevents advisors from discussing certain investments and options even when they might be in your best interest.
- **The Best Interest Contract Exemption ("BICE") Mechanism is Impractical and Stifles Participation in Innovation**
 - Leaving legal reservations aside, there is no clear mechanism for the Department to update the "approved list" of investments. As our advisory work has often shown, new investment products can be sources of lower costs and potentially higher investment returns. How does the next great idea get on the Department's list? How and how often will the list be updated? Without a mechanism and a clear format for doing just that, millions of America's retirement investors could be frozen out of the great ideas.
 - Speaking with all due respect and with from decades of experience with financial entrepreneurs, inventors don't wait to get on a list. They seek to fill unmet needs as fast as they can. In its current form, there is no mechanism in the current proposed rule for them to do just that. That flaw must be addressed for this proposal to work.
 - Instead, we urge a principles based approach that's used by other regulators.

- **The Proposal Increases Costs and Reduces Access to Advice for Workers**
 - By significantly increasing the legal and financial risks facing advisors, the effect of the Proposal will be to make investment advice and education more expensive, less readily available, and more generic, even as workers and retirees need more affordable, more accessible and more specific advice and education.
 - This in particular makes the proposal not only onerous for small businesses, it is makes economically unattractive to provide what should be a benefit to employees.
- **The Labor Department Should Not Be the Primary Regulator for Financial Advice**
 - The introjection of the Department of Labor into regulations that supersede the financial regulations developed over decades by Congress, the SEC, FINRA, State securities regulators, the State Insurance Commissioners, and Federal and State banking regulators, is simply confusing.
 - As the Department tries to replace their decades of coordinated experience and long-standing policies with a new, untested, one-size-fits-all Federal regulation that tells people what kind of retirement advisor they may have. The lack of a coordinated approach will leave workers, investors and retirees with diverging standards that create more confusion. A better approach would be to have all interested regulators work together to avoid these unintended consequences.
 - As our firm looks to provide current and future retirement benefits, from how many consultants covering how many regulators will we need advice?

We appreciate your time and attention in ensuring that retirement investors are provided with the broadest array of investment options, while taking all reasonable measures to avoid conflicted advice.

Respectfully submitted,



Kenneth D. Makovsky
President and Chief Executive Officer